

CHAPTER 20 NONCONFORMING USES AND STRUCTURES**Section**

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2000 GENERAL PROVISIONS

- 2000.1 The provisions of this title shall establish separate districts, each of which is an appropriate area for the location of uses and structures permitted in that district.
- 2000.2 Within the districts established by this title, or in amendments that may later be adopted, there exist structures, uses of land, and uses of structures that were lawful before this title was adopted or amended, but that would be prohibited, regulated, or restricted under the terms of this title or future amendments to this title. It is the intent of this title that nonconformities may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same district.
- 2000.3 It is necessary and consistent with the establishment of the separate districts under this title that all uses and structures incompatible with permitted uses or structures shall be regulated strictly and permitted only under rigid controls, to the extent permitted by the Zoning Act of 1938, approved June 20, 1938 (52 Stat, 797, as amended; D.C. Official Code §§ 6-641.01 to 641.15 (2001)(formerly codified at D.C. Code §§ 5-413 to 5-432 (1994 Repl. & 1999 Supp.))).
- 2000.4 Any nonconforming use of a structure or of land, or any nonconforming structure lawfully existing on May 12, 1958, that remains nonconforming, and any use or structure lawfully existing that became nonconforming on May 12, 1958, may be continued, operated, occupied, or maintained, subject to the provisions of this chapter.
- 2000.5 Nonconformities shall be regulated in the following categories:
- (a) Nonconforming use of land, including land use with a structure incidental to the use of the land;
 - (b) Nonconforming structure devoted to conforming use; and

- (c) Nonconforming use within a structure, whether the structure is conforming or nonconforming.

2000.6 A nonconforming use of land or of land with structures incidental to the use of the land shall neither be extended in land area nor changed to any use except a use permitted in the district in which the property is located.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 to 641.15 (2001) (formerly codified at D.C. Code §§ 5-413 to 5-432 (1994 Repl. & 1999 Supp.))).

SOURCE: §§ 7101.1 and 7102.1 of the Zoning Regulations, effective May 12, 1958; as amended by Final Rulemaking published at 30 DCR 3922 (August 5, 1983); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8495 (October 20, 2000).

2001 NONCONFORMING STRUCTURES DEVOTED TO CONFORMING USES

2001.1 The restrictions set forth in this section shall apply to a nonconforming structure devoted to a conforming use.

2001.2 Except as provided in §§ 2001.11 and 2001.12, ordinary repairs, alterations, and modernizations to the structure, including structural alterations, shall be permitted.

2001.3 Enlargements or additions may be made to the structure; provided:

- (a) The structure shall conform to percentage of lot occupancy requirements;

- (b) The addition or enlargement itself shall:

- (1) Conform to use and structure requirements; and

- (2) Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.

2001.4 If a nonconforming structure is destroyed by fire, collapse, explosion, or act of God to an extent of more than seventy-five percent (75%) of the cost of reconstructing the entire structure, the nonconforming structure shall not be restored or reconstructed except in conformity with all provisions of this title, except as provided otherwise in §§ 2001.5 through 2001.10.

- 2001.5 If a casualty or act of God results in damage to an extent of more than seventy-five percent (75%), and if the structure is nonconforming only with respect to percentage of lot occupancy, lot area, or width of lot, the structure may be reconstructed or restored to its previous condition or to a more conforming condition, even if that condition does not comply with the applicable percentage of lot occupancy, lot area, or width of lot requirements.
- 2001.6 If a casualty or act of God results in damage to an extent of seventy-five percent (75%) or less of the cost of reconstructing the entire structure, the structure may be restored or reconstructed to its previous condition or to a more conforming condition; provided, that the reconstruction or restoration shall be started within twenty-four (24) months of the date of the destruction and continued diligently to completion.
- 2001.7 If there is a dispute between the property owner and the Zoning Administrator as to whether the structure has been destroyed to the extent of seventy-five percent (75%) of reconstruction cost, the costs of restoration and of reconstruction shall be determined by the average of the estimates furnished by three (3) independent qualified contractors. One (1) contractor shall be selected by the owner, one (1) by the Zoning Administrator, and one (1) by the first two (2) mentioned contractors.
- 2001.8 The estimates required by § 2001.7 shall be prepared and submitted according to a standard procedure and format established by the Zoning Administrator, and the cost of estimates shall be at the expense of the property owner.
- 2001.9 Notwithstanding the restrictions of § 2001.4, a nonconforming structure that is a historic landmark or certified by the State Historic Preservation Officer to be a structure that contributes to the character of the historic district within which it is located, may be restored or reconstructed regardless of the extent of destruction of the structure, subject to the provisions of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979, D.C. Law 2-144, as amended; D.C. Official Code §§ 6-1101 to 6-1115 (2001)(formerly codified at D.C. Code §§ 5-1001 to 5-1015 (1994 Repl. & 1999 Supp.))), and all other municipal laws and regulations.
- 2001.10 The twenty-four (24) month period provided in § 2001.6 may be extended for as long as it takes to apply for and receive any governmental approvals necessary to accomplish the reconstruction or restoration, including but not limited to, approvals from the Board of Zoning Adjustment, the Historic Preservation Review Board, and the Mayor's agent for the Historic Landmark and Historic District Protection Act.
- 2001.11 A nonconforming antenna shall not be altered, modernized, or otherwise replaced, except in conformity with all provisions of this title.

2001.12 If a nonconforming antenna stops functioning, a temporary replacement antenna may be installed, subject to the following conditions:

- (a) A permanent replacement antenna cannot be installed as a matter of right;
- (b) The temporary installation shall be removed no later than one (1) year after the nonconforming antenna stops functioning;
- (b) Within three (3) months after the nonconforming antenna stops functioning, the owner or occupant of the land or structure on which the antenna is installed shall apply to the Board of Zoning Adjustment for a special exception under § 3104 to install a longer term replacement; and
- (d) If the owner or occupant elects to install an immediate replacement antenna, the cost of the temporary replacement shall not be considered by the Board as a basis for approval of a special exception to install a longer term replacement.

SOURCE: Final Rulemaking published at 30 DCR 3922, 3924 (August 5, 1983); as amended by Final Rulemaking published at 36 DCR 1509, 1521 (February 24, 1989); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8496 (October 20, 2000).

2002 NONCONFORMING USES WITHIN STRUCTURES

- 2002.1 The restrictions set forth in this section and §§ 2003 and 2004 shall apply to nonconforming uses within structures, whether the structure is conforming or nonconforming.
- 2002.2 Where the nonconforming use occupies only a portion of the structure, the restrictions in this section and §§ 2003 and 2004 shall apply only to that part of the structure devoted to the nonconforming use.
- 2002.3 A nonconforming use shall not be extended to portions of a structure not devoted to that nonconforming use at the time of enactment or amendment of this title, or to another structure.
- 2002.4 Ordinary repairs, alterations, or modernizations may be made to a structure or portion of a structure devoted to a nonconforming use. Structural alterations shall not be allowed, except those required by other municipal law or regulation; provided, that structural alterations shall be permitted to a lawfully existing, nonconforming flat or apartment house located within a Residence District.

2002.5 A structure devoted to a nonconforming use shall not be enlarged, except if the enlargement is to be devoted to a conforming use.

2002.6 A new structure shall not be erected to house a nonconforming use.

SOURCE: § 7106.1 of the Zoning Regulations, effective May 12, 1958; as amended by Final Rulemaking published at 30 DCR 3922, 3925 (August 5, 1983); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8496 (October 20, 2000).

2003 CHANGING USES WITHIN STRUCTURES

2003.1 If approved by the Board of Zoning Adjustment, as authorized in §§ 3103 and 3104 for variances and special exceptions, a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in this section.

2003.2 The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300 ft.) in all directions from the nonconforming use.

2003.3 The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

2003.4 When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.

2003.5 In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.

2003.6 For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:

(a) R-1-A, R-1-B, R-2, R-3, R-5-A, R-4, R-5-B, R-5-C, R-5-D, and R-5-E;

(b) SP-1 and SP-2;

(c) C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and C-5 (PAD);

(d) W-1, W-2, and W-3;

(e) CR; and

(f) C-M-1, C-M-2, C-M-3, and M.

- 2003.7 The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it deems necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

SOURCE: §§ 7103.1 and 7104.2 of the Zoning Regulations, effective May 12, 1958; as amended by: Final Rulemaking published at 30 DCR 3922, 3925-26 (August 5, 1983); Final Rulemaking published at 39 DCR 8305, 8309 (November 13, 1992); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8497 (October 20, 2000).

2004 DESTRUCTION OF STRUCTURE DEVOTED TO NONCONFORMING USE

- 2004.1 If a structure devoted to a nonconforming use is destroyed by fire, collapse, explosion, or act of God to an extent of more than fifty percent (50%) of the cost of reconstructing the entire structure, it shall not be restored or reconstructed except in conformity with all provisions of this title, except as provided otherwise in this section.
- 2004.2 If the casualty or act of God results in damage to an extent of fifty percent (50%) or less of the cost of reconstructing the entire structure, the structure may be restored or reconstructed to its previous condition or to a more conforming condition; provided, that the reconstruction or restoration shall be started within twenty-four (24) months of the date of the destruction and diligently continued to completion.
- 2004.3 If there is a dispute between the property owner and the Zoning Administrator as to whether the structure has been destroyed to the extent of fifty percent (50%) of reconstruction cost, the costs of restoration and of reconstruction shall be determined by the average of the estimates furnished by three (3) independent qualified contractors. One (1) of the contractors shall be selected by the owner, one (1) by the Zoning Administrator, and one (1) by the first two (2) mentioned contractors.
- 2004.4 The estimates required by § 2004.3 shall be prepared and submitted according to a standard procedure and format established by the Zoning Administrator, and the cost of estimates shall be at the expense of the property owner.

- 2004.5 Notwithstanding the restrictions of § 2004.1, a structure devoted in whole or in part to a nonconforming use that is also a historic landmark or certified by the State Historic Preservation Officer to be a structure that contributes to the character of the historic district within which it is located may be restored or reconstructed regardless of the extent of destruction, subject to the provisions of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144, as amended; D.C. Official Code §§ 6-1101 to 6-1115 (2001) (formerly codified at D.C. Code §§ 5-1001 to 5-1015 (1994 Repl. and 1999 Supp.))), and all other municipal laws and regulations. The nonconforming use may be resumed and continued as before.
- 2004.6 The twenty-four (24) month period provided in § 2004.2 may be extended for as long as it takes to apply for and receive any governmental approvals necessary to accomplish the reconstruction or restoration including, but not limited to, approvals from the Board of Zoning Adjustment, the Historic Preservation Review Board, and the Mayor's agent for the Historic Landmark and Historic District Protection Act.

SOURCE: §§ 7108.1, 7108.2 and 7108.3 of the Zoning Regulations, effective May 12, 1958; as amended by Final Rulemaking published at 30 DCR 3922, 3927 (August 5, 1983); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8497 (October 20, 2000).

2005 DISCONTINUANCE

- 2005.1 Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

SOURCE: § 7107.1 of the Zoning Regulations, effective May 12, 1958; as amended by Final Rulemaking published at 30 DCR 3922, 3928 (August 5, 1983).